## Table of Authorities Cited.

### Cases.


Aptheker v. Secretary of State, 378 U.S. 500, 84 S. Ct. 1659 — 4

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Home Building & Loan Association v. Blaisdell, 290 U.S. 398 — 3

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### Miscellaneous.


1965 U.S.C. Cong. & Adm. News, p. 3117 — 4

# Supreme Court of the United States.

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OCTOBER TERM, 1968.

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No.

THOMAS R. REDDY,
*Petitioner,*
*v.*
UNITED STATES OF AMERICA.

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## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR CERTIORARI.

Thomas R. Reddy presents his petition for rehearing of this Court's order dated February 24, 1969, denying his petition for writ of certiorari to the United States Court of Appeals for the First Circuit, and in support thereof respectfully shows:

There may have been a misconception of the position taken by the petitioner in this case because of statements made by the Court of Appeals and the Government relative to concessions made by said petitioner (Pet. App. A, 10; Govt's Brief, 5), thereby creating a circumstance of substantial effect not previously argued by petitioner.

Petitioner has conceded that he falls within the statutory classification of 15 U.S.C. § 902(e) since he had been convicted of a crime punishable by a term exceeding one year. The Court of Appeals has recognized this as a reasonable concession (Pet. App. A, 10, n. 1) and in fact it would have been fatuous to have done otherwise. This,

however, is not to concede that the statutory classification is not arbitrary or unreasonable as applied to petitioner.

There is the question whether or not the crime of which petitioner had been previously convicted, punishable by a term exceeding one year, bears on his likelihood to engage or promote the type of activity which Congress sought to control in section 902(e). This statute presumes that there is such a likelihood. In effect it says that the petitioner, when he caused firearms to be shipped or transported in interstate commerce, did so to further the ends of the activity sought to be controlled. This presumption arises only because of his prior conviction of a crime punishable for a term exceeding one year regardless of whether it poses the threat of the activity sought to be controlled. It is submitted that such a presumption is illogical as was found regarding a similar presumption in 15 U.S.C. § 902(f). *Minski* v. *United States,* 131 F. 2d 614, 617; cert. den. 319 U.S. 775.

It is not a crime in itself to have been convicted of a crime punishable by a term exceeding one year, nor is it a crime in itself to ship or transport firearms in interstate commerce. Why then should the former, without more, create the presumption impliedly contained in section 902(e) when coupled with the latter? "Such a presumption does not exist in fact and cannot be brought into existence by legislative fiat." *Minski* v. *United States, supra.* To create such a presumption violates petitioner's right to due process of law and makes possible his criminal conviction based on mere conjecture rather than on evidence of criminality, contrary to the most fundamental principles of our criminal jurisprudence.

Petitioner has also recognized the purpose of section 902(e) to be laudable and legitimate, but again this is not to concede that this section is valid as to him. In attain-

ing such a purpose the Constitution requires that the powers of Government "must be so exercised as not, in attaining a permissible end, unduly to infringe [a constitutionally] protected freedom." *Cantwell* v. *Connecticut,* 310 U.S. 296, 304. Although the end is recognized as legitimate it "cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit." *United States* v. *Robel,* 389 U.S. 258, 263. Constitutional limitations regarding essential liberties remain. *Home Building & Loan Association* v. *Blaisdell,* 290 U.S. 398, 426. The petitioner is not to be presumed guilty of the activity sought to be reached by section 902(e) and should not be jailed for "predicted but unconsummated offenses." *Williamson* v. *United States,* 184 F. 2d 280, 282-283 (2d Cir.).

Congress can and in fact has used less drastic means to achieve the end desired by section 902(e) as it presently stands. This was demonstrated by the Federal Firearms Act, 15 U.S.C. §§ 901-909, prior to its amendment in 1961. At that time section 902(e) made it unlawful for one convicted of "crimes of violence" to ship, transport or cause to be shipped or transported in interstate commerce, firearms. "Crimes of violence" were defined in 15 U.S.C. § 901(6) as "murder, manslaughter, rape, mayhem, kidnaping, robbery, burglary, housebreaking; assault with intent to kill, commit rape, or rob; assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year." All of these, it is submitted, were more closely related to the purposes intended by the Congress. These generally are the types of crimes one expects to be associated with racketeering and to be committed by those interested in furthering its ends. While some innocent of any connection with racketeering might be caught within this section

as it formerly read, such a result can be tolerated under the circumstances when the end is legitimate. Section 902(e) as it formerly read demonstrates, therefore, that the citizen "can be adequately protected by means . . . more discriminately tailored to the constitutional liberties of individuals." *Aptheker* v. *Secretary of State,* 378 U.S. 500, 514, 84 S. Ct. at 1668, cited in original brief. *Schneider* v. *State,* 308 U.S. 147, 161, 60 S. Ct. 146, 150.

It is the defendant's position that the foregoing considerations compel the conclusion that section 902(e) of the Federal Firearms Act is unconstitutional as applied to the defendant.

> "The section, judged by its plain import and by the substantive evil which Congress sought to control, sweeps too widely and too indiscriminately across the liberty guaranteed in the Fifth Amendment. . . . The broad and enveloping prohibition indiscriminately excludes plainly relevant considerations such as the individual's knowledge, activity, commitment, and purposes . . . The section therefore is patently not a regulation 'narrowly drawn to prevent the supposed evil,' cf. *Cantwell* v. *Connecticut,* 310 U.S., at 307 . . ." *Aptheker* v. *Secretary of State, supra,* 514.

Congress itself recognized the fault in section 902(e) when it enacted 15 U.S.C. § 910, see 1965 U.S.C. Cong. & Adm. News, p. 3117. Section 910, however, it would appear, applies only to dealers and manufacturers, at whose insistence, said section became law. But what of the petitioner and the many individuals within the classification of section 902(e) not covered by section 910? It would appear both he and they are exposed to a presumption of being guilty of furthering or promoting the activities sought to

be controlled without evidence of criminality other than the fact of a prior conviction of a crime punishable for a term exceeding one year.

For the foregoing reasons, it is respectfully urged that this petition for rehearing be granted and that upon further consideration a writ of certiorari issue to the United States Court of Appeals for the First Circuit.

EUGENE X. GIROUX,
Attorney for the Petitioner,
One State Street,
Boston, Massachusetts.

Date: March 17, 1969.

I, Eugene X. Giroux, attorney for the above-named petitioner do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the rules of this Court.

EUGENE X. GIROUX,
Attorney for the Petitioner.

Dated: